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ABSTRACT

Addressed to churches and child caregivers, this policy report seeks to describe in layman's language the reasons for the liability insurance crisis confronting child care providers. It defines insurance terms, shows how the industry sets insurance policies and rates, and describes policies currently being written for child care programs by several insurance companies. Further, the report analyzes the instant and effective response among child care organizations and advocates who recognized the urgency of the crisis which was beginning to shut down child care programs across the country. The churches' particular response to the crisis is also described. Included are: (1) results of a study of the denominations and of the National Council of Churches' 1986 survey of liability problems faced by church-housed child care programs; and (2) deliberations of national church representatives who participated in a 1987 Council-hosted consultation on risk management. Legal expert Jim Strickland describes the current movement among non-profit, charitable organizations to reform laws governing insurance, and otherwise to address the crisis. California advocate Sharon Kalemkarian shares the experience of providers faced with cancelled insurance. Finally, to provide additional information, a resource chapter provides references to books, organizations, newsletters, and experts in the churches and in the fields of child care and child advocacy. (RH)

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In the Eye of the Storm: Liability Insurance and Child Care

Policy Report #2

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Preface

From its inception the National Council of Churches' Child Advocacy Office and its Ecumenical Child Care Network (ECCN) have been committed to addressing the needs of both church-housed child care programs and the larger church community. This commitment has been demonstrated by the careful development of the *ECCN Newsletter* which regularly provides current information by, for and about church-housed child care providers, and by the development in 1984 of a comprehensive *Child Care Policy Statement* which was adopted by the Governing Board of the National Council of Churches and which serves as a primary tool for education about the important ministry to the community which church-housed child care constitutes.

More often than anyone would wish, the ECCN has found it necessary to meet the need for information and resources felt by providers and churches in the face of crisis. When a rash of indictments for child abuse (some of them in day care centers) became public, the ECCN published a special edition of the *Newsletter* offering calm and sound advice for parents, providers and churches. More recently the *Newsletter* has explored issues related to health care and employee benefits. When liability insurance policies for child care centers began to be cancelled and premium costs sharply escalated, the ECCN took thoughtful and carefully planned steps in response. Through a survey of ECCN readership, a clearer picture of the extent and nature of the liability insurance crisis within church-housed child care was obtained. A major consultation with national church leaders reviewed and discussed the findings, a summary of which was published in the *Newsletter*.

The present report provides a much needed compilation of the materials related to the liability insurance crisis. This booklet is an invaluable asset to churches and providers as they continue to seek the best for our nation's youngest citizens. The National Council of Churches is pleased to make this report available in keeping with our own commitment as Christians to provide children with every opportunity to live the lives for which they were created.

Arie R. Brouwer
General Secretary
National Council of the Churches
of Christ U.S.A.

Acknowledgements

The publication of *In the Eye of the Storm* has been made possible through the efforts, guidance, and assistance of a number of people. We are very grateful to all of them.

First, we want to thank our own network membership who brought the problems associated with liability insurance to our attention, shared their stories, and responded to our 1986 questionnaires on the issue.

The funding necessary for the study and for this report came from the Carnegie Corporation of New York. We appreciate their generous commitment to young children. The Carnegie Corporation is not responsible for statements or views expressed in this report.

A number of leaders in child care and insurance issues offered us information, resources, consultation and assistance in writing and editing. We are especially indebted to Alan LaRue of Work Family Directions and Jim Strickland of Child, Inc. And we appreciate the help of Laura Dean Friedrich of ChildServ, and Sandy Gellert of the National Association for Family Day Care. We are grateful also to the Child Care Law Center and the Child Care Action Campaign for sharing with us the work they have done in this field.

We are especially grateful to our staff intern, Wendy McCormick, whose research and editing were critical to the production of this report. Eileen Lindner, our senior consultant, and June Rogers, the former director, offered valuable background and writing assistance. Finally, Carol Jackson, our secretary, and Katherine Lehman-Becker, our newsletter editor, assisted with the editing and production.

Our thanks go to all who made this report possible.

Karen Collins
Director

Margery Freeman
Field Associate

In The Eye Of The Storm

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Introduction

"I am convinced that we need to have the freedom and right to carry out the kind of ministry our churches wish. We need to do all in our power to see that nothing prevents us from continuing the programs and activities which we see as our religious obligation and right."

–Robert Sallies
Treasurer and Vice President of Finance
Unitarian Universalist Association
From a statement at 1987 NCC Risk Management Consultation

There is an irony in this Policy Report: After years of benign neglect, child care now occupies a more significant place on the agenda of ministers and church boards, at least in part because of the "insurance crisis." Either the cost or the risk of caring for children in our churches now moves us to serious consideration of what we are doing. Gone are the days when Ms. Johnson starts a toddler program in the elementary Sunday School room with no more than wave-of-the-hand approval from her pastor. Gone, too, are the days when Happy Day Head Start moves into the basement of our building on the word of Ms. Oliver, the church's treasurer.

We are a litigious society. Since the church is a social institution, it too is plagued by legal stresses. We surround our ministry to children with leases, by-laws, agreements, contracts, which threaten to overwhelm our faith commitment and our sense of good will. We find ourselves asking not, "Is this ministry needed?" but "Is this ministry safe?"

But our children are waiting. Their families need the care we offer in our churches. Now is not the time for churches to abandon the children for fear of legal difficulties. Our only question must be: "How can we do this ministry *safely?*"

In the Eye of the Storm is our effort to answer that question. Most of us are not legal experts or risk management specialists. We open our insurance bill with fear and trepidation —but rarely with knowledge and insight. We often meet our board or pastor at the point of crisis: an insurance policy cancelled; a parent threatening to sue. We seek an immediate solution. Frequently we accept the information of an insurance agent at face value, having nothing with which to analyze or compare it. Usually we depend on advice from friends and colleagues to help us select a course of action.

This Policy Report offers information. It seeks to describe in lay language the reasons for the liability crisis. It defines insurance terms, shows how the industry sets insurance policies and rates, and describes policies for child care programs currently being written by several insurance companies. It analyzes the instant—and effective—response among child care organizations and advocates who recog-

nized the urgency of the crisis which was beginning to shut down child care programs across the country.

The Church's particular response to the crisis is also included. The Report offers results of a study of the denominations and of the National Council of Churches' 1986 survey of liability problems faced by church-housed child care programs. A Consultation on Risk Management, hosted by the National Council of Churches in early 1987, brought together national church representatives to share information and to create new responses to the crisis. The participants' deliberations are summarized in this Report as well.

Also part of this Report are the knowledge and insights of two guest writers: Jim Strickland, who is one of the nation's foremost authorities on liability and risk management, describes the current movement among non-profit, charitable organizations to reform laws governing insurance, and otherwise to address the crisis; and Sharon Kalemkarian, a California child advocate, shares the experience of providers faced with cancelled insurance. The Insurance for Child Care Project, which she founded, is a testimony to the strength of effective community organizing. In California, child care insurance is now available to thousands of providers who were "uninsurable" just two years ago.

Finally, we include a resource chapter with reference to books, organizations, newsletters and experts in the churches and in the fields of child care and child advocacy, to provide additional information.

In these times, we can no longer be passive buyers of insurance; we must be active and informed managers of risk. We have designed I*n the Eye of the Storm* with child care providers *and* churches in mind, believing that such informed activity is central to our ministry of child care —providing excellent care to children and doing so at a minimum of risk.

Strengthened by knowledge and information about risk management, we who care for children in the churches can continue our ministry, confident that in doing so we are responding to that great call:

> *"Suffer the little children to come unto me, and forbid them not; for of such is the kingdom of God."*
>
> –Matthew 19:14

The Gathering Storm

History Of The Crisis In Child Care Insurance

In the summer of 1985 the Child Advocacy Office of the National Council of Churches published a special issue of its *Ecumenical Child Care Newsletter* on the growing crisis in liability insurance for child care centers. Little did we know we had found only the tip of an iceberg that was beginning to freeze the entire child care industry and many other segments of this country's not-for-profit sector as well.

Throughout 1985, confused and sometimes desperate calls from church-housed child care providers across the nation dramatized the growing crisis. One Texas nursery school director reported that her policy was cancelled with only thirty days' notice and that she was informed that in order to renew, her $600.00 per year policy would be increased to $7000.00 per year. While this was a most extreme increase, the correspondence, telephone calls and staff visits that year to such diverse states as Missouri, Illinois, Ohio, New Mexico, Idaho and Washington confirmed that this was not an isolated event.

The Child Advocacy Office commissioned a study in 1985 so it could gain an understanding of the costs, benefits and practices pertaining to child care liability insurance. What we discovered gave us cause for concern. Rates for insurance coverage vary widely from state to state throughout the country and do not appear to be based upon actuarial information (i.e., not based upon the frequency with which liability claims occur). The study found inadequacies in coverage as well.

Further, it was learned that while many church-housed programs have liability coverage under the host church's umbrella insurance policy, an option which has proven to be a good one for church-housed and church-run programs alike, some churches had begun to fear dramatic rate increases in their insurance to cover a child care program, as well as possible suits against their larger assets. Concern mounted that churches might become reluctant to provide space for child care programs and for other ministries as well —homeless shelters, food programs, AIDS ministries, to name just a few.

Of particular concern was the problem of obtaining insurance for family day care providers who appeared to be the hardest hit by the liability insurance crisis. Some family day care providers had been able to secure the necessary coverage with a rider on a homeowner's insurance policy; others found it prohibitively expensive to do so. Still others had their policies cancelled because they operated family day care programs, or they discovered it was impossible to obtain any homeowner's insurance at all if they provided child care in their homes.

Both the ECCN study and the Child Advocacy staff's personal contacts with our membership yielded the same disturbing information: Child care programs were caught in a web of insurance problems not of their own making. In the Child Advocacy Office we began to refer to the insurance crisis in child care as "the gathering storm," since the problem seemed to be worsening.

The Insurance Industry and Its Child Care Market

What happened in 1985? What had changed about child care? About insurance? How and why did the insurance industry determine that child care providers were a high risk? And, most important, what was to be done? Seeking answers to these and many other questions requires first an understanding of the liability insurance crisis itself.

The insurance industry is in the business to make money. It relies heavily on investments of premium money for a substantial portion of its revenue. How much insurance companies make in these investments varies cyclically. For a number of years prior to 1984, high returns on investments contributed to substantial industry profits. In these times, insurance sales were highly competitive so liability insurance was not especially difficult or costly to obtain. This stage is generally called a "soft" cycle.

At some point such a soft cycle is inevitably followed by a low period or "hard" cycle. This stage includes lower rates of return on insurance company investments and hence higher policy rates. Typically these low cycles come about every five to seven years, though they may be longer or shorter than that. The cycle that hit the industry in 1985 was overdue and particularly severe: falling interest rates coincided with drastic losses due to hurricane damages and several other big insurance settlements in 1984-1985. The combination spelled a financial crisis for insurance companies. The industry responded with across-the-board raises in premium rates *and* the identification and abandonment of high risk and small profit markets. Almost overnight, the child care industry, a very small profit market for insurance companies, was seen as too risky to insure.

Coupled with the hard cycle and the financial worries it brought insurers, the highly publicized child sexual abuse scandals of 1984-1985 contributed to the insurance industry's fear of risk in the child care market. The media coverage of the abuse scandals fueled the flames of fear of liability in the insurance industry, because even a claim of abuse that turns out to be unfounded can be costly to defend.

Though the child care industry does not have a history of large or frequent claims of abuse or other liability, it was suddenly labeled "high risk," and liability insurance became prohibitively expensive and nearly impossible to obtain.

The insurance industry raised premiums and wrote fewer policies for child care programs, because it recognized that children make appealing plaintiffs likely to be awarded damages in any suit. Additionally, since children can sue for damages until the age of majority, (the industry calls this a "long tail") for something that happened in their childhood, the insurance industry recognized it was exposed for financial loss for many years after an incident occurred.

Clearly, there were reasons for the insurance crisis that had nothing to do with the child care industry or with the quality of care being offered. But suddenly in 1985, child care was lumped with medicine, particularly pediatrics, and other high risk markets (and weekday child care is classified with 24-hour child care which is where most suits occur). The insurance industry decided to get out of the child care market. Across the country, insurers cancelled policies, increased rates, or refused

to renew coverage. Rates skyrocketed, often in the range of 300%-400% increases. Some premiums increased by as much as 10 times their previous levels. With budgets already stretched to the limit, many child care programs were unable to pay price increases of this magnitude. Some programs were unable to find insurance at any price. Inner-city and publicly funded programs had a particularly difficult time securing any insurance, especially at an affordable rate.

Lack of available and affordable liability insurance drastically affected many family day care providers, as well. In many states family day care providers are not required to be licensed or insured. Many family day care providers who were refused a liability rider on their homeowner's policy or threatened with loss of their policy altogether, felt they must do without insurance.

Response of Child Care Providers and Advocates

This 1985 story of outrageously high insurance rates and "uninsurable" child care programs — a crisis sprung up overnight — has another chapter: That is the story of how child care providers and advocates responded to the crisis. Indeed, the insurance industry was hardly prepared for the well-developed advocacy typical of child care providers. Child care leaders are good grass-roots advocates and across the country, from the midst of the storm of the liability crisis, they began to fight these new insurance challenges.

One problem they immediately exposed was that insurance companies did not understand the child care field as well as they did some other industries. They did not have clear guidelines or appropriate standards for evaluating the *risk* of insuring child care facilities. Accurate and thorough claims records for the child care industry did not exist.

Locally, child care program directors began to inform their insurance agents and their state insurance commissioners of the realities of child care. And nationally, spokespeople for the child care industry began to meet with and educate representatives of the insurance industry, as well as state and national legislators.

The Child Care Action Campaign formed a National Child Care Task Force on the Insurance Crisis which was composed of representatives from leading child care organizations, including the NCC Child Advocacy Office.[2] This group met with insurance industry representatives to educate them about child care and its loss history. From these efforts, the Continental Insurance Company developed a new policy specifically for child care providers (See details of the Continental plan and several other insurance policies beginning on page 23). From these national child care advocates also came a great deal more information about the insurance industry itself.

Since 1985, state and local organizations, as well as individual child care providers and church leaders, have continued to develop short-term strategies to keep operating *insured* child care programs, and to seek long-range solutions so that sound insurance coverage at affordable rates is available to all providers of child care.

Response of the National Council of Churches

Naturally, any discussion of injury, death, lawsuit, and the need for insurance "just in case" makes child care providers and church officials anxious. The insurance crisis has made their anxiety mount even higher. Some have asked the question: "Is it worthwhile for the church to continue its child care programs?" The answer from the National Council of Churches and its Child Advocacy Office is an emphatic, "Yes!" In its 1984 Policy Statement on Child Day Care, the National Council of Churches affirmed:

> *Child care is of urgent concern to all families with children and to the country. Child care must also be an urgent pastoral and prophetic concern for the church...*
>
> *Drawing from their history, Christians today are called to service in seeking reconciliation and the biblical shalom — within families and within the larger society. The church seeks to offer the Good News of Christ to families and to support them in their critical activity of child rearing. The ministry of child care is yet one more way in which the Christian community is called to extend both the nurturing ministry of the church and the prophetic proclamation of justice to children, families, parishes and society. Few in our society are as vulnerable as children, dependent as they are upon adults for all means of support — material, emotional, physical and spiritual. Called to witness to God's love and to love of neighbor in advocacy for child care, the church finds again its vocation, and individuals their ministry, in enabling persons to live the lives for which they were created.*[3]

Were churches to be prevented from the ministry of child care by insufficient or unavailable insurance coverage, or be hesitant to follow the gospel for fear of liability, or fail to engage in ministry to children or others in need, it would be a tragic limitation of discipleship.

In keeping with its mission and commitment, the National Council of Churches through its Child Advocacy Office sought to respond — and to encourage its member denominations and their local churches to respond — to the child care liability insurance crisis. In addition to participating in national advocacy efforts such as the Child Care Action Campaign's task force, the Child Advocacy Office took some special steps in response to the liability insurance crisis in church-housed child care.

First Questionnaire

In late 1985, we published a questionnaire in our Ecumenical Child Care Newsletter, designed to gather data about liability insurance in church-housed child care programs. We followed this first questionnaire with a second to elicit further information from select programs.

Responses to the first questionnaire included several interesting and potentially important realities regarding insurance coverage in church-housed child care programs:

> ***Most (over 80%) of the programs reported having liability insurance. 17% reported they are not insured.**
>
> *Most (63.9%) of the programs reported they obtain their coverage under the church's umbrella insurance policy.
>
> *The majority of church-housed child care programs were, in 1985, unconcerned about liability insurance despite an average 45% increase in the cost of coverage. Great regional differences in this reported level of concern suggested that parts of the country had not yet been dramatically effected.
>
> *Separately incorporated church-housed programs which purchased insurance independently or through a group plan (as opposed to a church policy) expressed the greatest concern about the cost and availability of insurance.

In addition to increasing our knowledge about church-housed child care insurance practices, this research also revealed that **nearly 1/5 (20%) of the programs reported that they do not have accident insurance.** This should be a matter of concern to child care programs, churches and parents alike.

Second Questionnaire

Respondents to the initial liability questionnaire were asked to indicate whether they would be willing to provide more in-depth information. As a result, one hundred and eighty-two programs were sent a follow-up questionnaire. (This sample had experienced a 42% increase in liability insurance premiums between 1985 and 1986.)

The following are highlights from the second questionnaire:

- Liability insurance coverage is quite fluid among ECCN members: 30% of the programs changed insurance underwriters during 1985. 63% of this number reported that the change in insurance underwriter was due to *cancellation* of their policy. 21% reported a change because of cost, and 16% reported a change to obtain a better policy.

- The second questionnaire was designed to gather information about the claims history of church-housed child care programs. Nationally, insurance companies have argued that they must increase their premium rates to meet an increasing number of liability claims. (Such an argument was not substantiated by the NCC data). Taken as a whole, the sample reported seven claims in a total of five hundred and one claim years (that is, the total number of years for which these programs were insured.) This very small record of liability claim would be diminished even further if one were to consider "child claim years" (that is, the *total* number of years individual children were covered by such policies.)
- The data further suggests that liability insurance coverage is consuming an increasing portion of child care program budgets. For the sample as a whole, 1.9% of an average total budget is spent for liability insurance. When accident insurance is included, the total portion of the budget is 2%. As a fixed cost, this reflects an increase in the portion of the budget spent for insurance.
- A very interesting trend appeared when the results of the second questionnaire were compared with those of the first. In response to the second questionnaire, 38% of independently incorporated programs reported that they are covered under church umbrella policies. This reflects a 50% increase from reported coverage under church umbrella policies in the first questionnaire! It is reasonable to speculate that such programs sought relief from the insurance crisis by purchasing insurance under the church umbrella program, and have been enabled to do that by local congregations and their insurance underwriters. Were this trend to continue, it would point to a fruitful resolution of some of the insurance problems for local child care programs housed in churches.

The ECCN membership survey was a first step in the Child Advocacy Office's efforts to articulate and address these problems. As a second step, we decided to educate both *churches* and *insurers* about the child care industry.

Risk Management Consultation

In January, 1987, the NCC sponsored a Consultation on Risk Management, the first such gathering of representatives responsible for finance and insurance in major church denominations, together with those individuals responsible for administering programs with young children. Faced with some harsh realities, twenty-eight executives from national denominations shared both the impact of the insurance crisis on their ministries and their immediate struggle to seek solutions. Participants shared information about current trends in insurance and the impact upon the church, developed strategies for responding to the current situation, and advised the Child Advocacy Office on options related to church-housed child care.

This fruitful meeting marked the first time ever that representatives of NCC denominations had come together to think about issues of insurance and their implication for the church's ministry. Robert Sallies, Treasurer and Vice President of Finance for the Unitarian Universalist Association, spoke to the church's perspective

on these questions with these words: "I am convinced that we need to have the freedom and right to carry out the kind of ministry our churches wish. We need to do all in our power to see that nothing prevents us from continuing the programs and activities which we see as our religious obligation and right." With these words, Dr. Sallies struck at the heart of the issue facing all churches engaged in child care and a variety of other ministries and summed up the national leaders' commitment to the continuation of this work. Participants agreed that faithfulness to the call to respond to children and others in need must be the church's priority, unhindered by the restrictions of the insurance crisis. With this renewed commitment to ministry as their focus, participants discussed goals and strategies for meeting insurance needs.

Several denominations were exploring national carriers, self-insurance options and "piggy backing" on denominational plans already in operation. All were convinced that though the insurance market has stabilized, assuring greater access to coverage, the difficulty of obtaining insurance protection at affordable prices is real. Participants agreed, therefore, to continue to meet together ecumenically to share models, to seek more effective solutions for the protection of the churches' urgent social and pastoral ministries, and to be available to consult with the Child Advocacy Office on the continuing risk management issues affecting child care.

This pivotal gathering began important interdenominational dialogue about short and long term liability insurance concerns in the broader context of the churches' dedication and commitment to active mission in the local communities of this country.

New Policies

Finally, the Child Advocacy Office and its governing board explored the possibility of a nationwide liability insurance policy specifically for church-housed child care programs. Institution of such a national group policy, we learned, is a complex and time-consuming marketing challenge. Finding a company willing to insure a group such as ours at reasonable rates is difficult. And starting a group policy would require raising considerable capital and securing adequate management. Furthermore, a national policy would probably still require state by state approval with no guarantee that all states would approve. Finally, a disadvantage of such a group policy could be its identification with a particular risk (in this case, child care) and therefore its appeal as an attractive target for plaintiffs.

As the Child Advocacy Office was researching the possibilities of a national group policy for church-housed child care programs, several national policies began to appear. At the same time, some church-housed programs shifted to church umbrella policies. For these reasons the Child Advocacy Office determined that a NCC-sponsored national insurance program for ECCN members was not a priority at that time.

The Child Advocacy Office continues to be involved with child care and church

leaders in education and advocacy around issues of child care liability insurance. This Policy report offers resources and information so churches with child care programs can obtain adequate insurance coverage and think about the long-term insurance needs of the children in their midst.

Response Of The Denominations

The churches' responses to the problem of obtaining liability insurance coverage at affordable rates has been moderate considering the enormous publicity and concern generated by the issue. Churches have not attempted radical changes in the vehicles by which they insure against risk. There does not yet seem to be any noticeable effort to self insure, to form captive insurance companies, or to make changes to denominational structures for the purpose of obtaining greater insurance protection. For the most part, churches have placed their emphasis on working to improve their own business conduct and practicing loss control with the hope that such improvements will reduce the risks of "being in mission" in child care and other arenas and bring insurance carriers back to the market place.

The churches' responses have been educational. They have targeted those areas of corporate conduct which seem to be related to liability claims against programs operated by church-related agencies in general. They have also dealt specifically with issues that are of concern to child care facilities.

The dangers to nonprofit organizations were made particularly vivid in 1978 when residents of United Methodist-related retirement homes in California sued several United Methodist organizations on the basis of contracts signed by only one of them. Plaintiffs claimed that the entire denomination was responsible for the acts of a local agency. Subsequent to the settlement of that litigation in 1980, leaders in several major denominations began to study the structure of their respective denominations — their polity — to determine whether similar claims could be pressed successfully against church-related agencies. The result of that self-examination of possible ascending liability was an intense effort to educate local churches and agencies concerning two critical areas of their conduct and practice. These were: first, the make-up, role and function of boards of directors as managers of agencies and the need for the establishment and implementation of good management practices in those agencies, and second, the importance of clearly and precisely communicating to the public — especially to persons who are not members of their denominations — the legal relationships between church-related agencies and mission programs.

Training Boards of Directors

The United Methodist Church has undertaken, over the last seven years, to sponsor workshops and seminars for the purpose of educating and training individual members of boards of directors of local organizations and agencies. It has emphasized the role and legal responsibility of directors as policy makers with particular attention to long range planning, financial and fiscal stewardship, personnel policies, and to other areas where legal preventive maintenance can be accomplished. They have also prepared materials to be used by agencies after the workshops have concluded and are currently planning to train persons, who on a longer term basis will be able to conduct training sessions for other boards of directors.

Accurately Communicating Relationships

Several denominations have attempted to address the legal issue of "ascending liability" — that is, the problem of one entity in a denomination potentially having legal responsibility for the acts of another — and to afford themselves protection by educating themselves and their agencies to the kinds of situations which pose the danger. If these efforts are successful, denominations will have limited the risks associated with mission programs.

Addressing Issues in Specific to Child Care Programs

What have denominations done to address the specific issues facing child care facilities? Many have published and distributed information and literature designed to reduce risks attendant to those operations. These educational efforts have been directed to four specific areas:

Personnel

Churches are encouraging child care facilities to screen very carefully any person who will be assigned responsibilities related to the care of children. They emphasize the importance of thoroughly and carefully checking the background, references and prior employers of professionals who have applied for positions as well as of volunteer persons who are to be assigned responsibilities for the care of children. The published literature most often also provides guidelines for the numbers of persons who are needed to operate a child care agency prudently and encourages agencies to make sure that professional persons and volunteers are assigned functions which are appropriate to their training and responsibilities (*Target*, developed by the General Council on Finance Administration of the United Methodist Church; see Resources, page 48).

In addition, most of the denominations have encouraged their related agencies to develop written personnel and employment policies and to develop effective written guidelines and procedures to be followed by agency personnel in implementing the programs of the agency.

Education

A second area focuses on the continued need to provide and to identify resource materials which are available to child care facilities and which can assist them to educate children, parents and staff on what is perhaps currently the most sensitive and publicized issue related to their work: sexual abuse of children. The Neighborhood Action Program of National Ministries of the American Baptist Churches, USA, is a particularly effective document in this regard. It attempts to provide practical "nuts and bolts" information regarding the subject of the sexual abuse of children and strategies which can be adopted to prevent it (*Jubilee*, Neighborhood Action Program; see Resources, page 48).

Action Plans

Thirdly, national agencies are encouraging child care facilities to adopt "action plans," that is, plans which outline specific steps to take if sexual abuse is either suspected or discovered. Aside from the obvious need to deal sensitively with children, parents, staff, and other persons who may be involved in such an incident, national agencies emphasize that child care programs need to know whether state law requires reporting suspected abuse. They further recommend that programs institute plans and procedures to limit the risk of multiple claims.

Some insurance carriers have expressed concern about the churches' propensity to give persons a second chance. But in cases of alleged child abuse, an alleged child abuser must be isolated from situations which may give rise to additional claims and thus to greater financial exposure.

Another "action plan" suggested by denominations is to have clear procedures to meet medical emergencies which may occur at a child care facility.

Inspection of Premises

Finally, every denomination surveyed advises that church-housed child care program premises be inspected in order to determine potential risks from the physical surroundings which can be reduced. Is the center licensed and in compliance with fire and safety codes? Even though licensed, have all obvious dangers to children been eliminated? Is the property protected adequately against fire hazards, and are appropriate evacuation procedures in place? Is the property secure against the unrestricted access of strangers to the premises? Are children able to wander off unnoticed? Is transportation to and from the facility adequate and safe, and are drivers properly licensed and trained?

Risks associated with church-housed child care will make some programs difficult to insure, especially where there is uncertainty concerning the degree of risk to be insured against. For example, insurance carriers are likely to insure programs which are "church-sponsored" or "church-related" but less likely to insure those that have a more distant relationship to the church. In part, that's because carriers often find that there is no common experience factor by which to assess the risk of programs. Moreover, a less direct church connection limits an insurer's opportunity to reduce the perceived risks of child care operations.

Even where a church relationship is present, child care programs which are operated in connection with other mission activity — i.e., programs for the homeless, or programs for persons with AIDS — and are not maintained as distinctly separate from those programs, will probably continue to find it more difficult to secure affordable liability insurance. Similarly, churches or agencies which cannot afford to train boards, pay adequate salaries to their professional personnel, invest in property improvements required to meet code, and adequately manage risks of their mission work are not likely to survive over the long term without financial assistance. Insurance carriers, while they do not want to lose market share, do not appear to be ready to take the perceived risks associated with those kinds of programs. The future of our child care programs therefore requires that their boards of directors

put in place a process for anticipating and for regularly assessing the agency 1) to develop policies and procedures to minimize and manage risks and 2) to reduce substantially the likelihood of successful claims being brought against child care facilities.

Further, if churches want to continue serving poor families as well as families with financial resources, they need to establish priorities regarding expenditures of funds and use of assets so that all children can be cared for in sound safe, and affordable programs.

Risk Management In Child Care[4]

Issues of liability insurance for child care are complex. Nothing short of improving "the system" in this country is needed, and that may be a long process. In the meantime, how do we best meet our insurance needs so we can turn our attention to the children we serve, free from worries about liability risks?

Risk Management

Most church child care programs are led and staffed by knowledgeable, responsible, talented and deeply committed women and men from all economic and cultural backgrounds. But even the best program *needs risk management.* Because accidents do happen. And because even an unfounded accusation of neglect or abuse can be costly to defend.

Insurance is only part of risk management and should not in and of itself be the first step. Risk management is the overall strategy of identifying, analyzing, and evaluating your risk *and* choosing the most advantageous methods of treating it. All programs need to examine carefully all their procedures with what Jim Strickland calls "the eyes of a plaintiff and the ears of a juror." What are your risks? In what ways and under what circumstances could you be held liable or found negligent?

A first step of risk management is to scrutinize program policies and activities for risk. And, as you identify risk, ask how it might be prevented or minimized. Adopt policies of *loss prevention* or loss control. This term refers to a child care program's efforts to reduce its liability risks, thereby improving the program *and* making it more attractive to insurance companies. The value of such efforts cannot be overstated. Loss prevention includes but is not limited to:

- being sure your program is licensed. In addition, it means setting high standards of health, safety and professionalism.
- inspecting your play equipment, materials and toys. Are they well-constructed? fire-proof? blunt-edged?
- developing prevention and procedures for a lost or kidnapped child.
- maintaining fire equipment and prevention procedures (fire extinguishers, fire drills, and evacuation plans).
- training your staff and volunteers in first aid, safety and health and maintenance procedures.
- providing in-service training in child abuse prevention and in responding to allegations and accusations of abuse (including sexual abuse). The insurance industry's fear of child abuse suits continues to make them hesitant to underwrite child care programs. And some providers

have trouble when they respond in panic or anger to unfounded charges.

- speaking with your insurance agent or broker about program or building improvements that would make your program more attractive to insure and would reduce your rates. Ask what risk management and loss prevention steps they would recommend.

The best strategy in the storm of the liability insurance crisis is a comprehensive risk management approach, including loss prevention. Take these efforts seriously, and include professional consultation in your risk management work. Jim Strickland's article (see page 31) gives further suggestions for loss prevention and risk management, as does his company's risk management training seminar (see resources, Human Services Risk Management Exchange - Child Inc.). Another resource for your risk management would be a local lawyer who could go over your program and facilities and point out areas of risk from a plaintiff's perspective.

WHAT DOES IT ALL MEAN? —A FEW DEFINITIONS

Part of dealing with the issues of liability insurance is learning to speak the language. Below are some key terms for handy reference.

- *captive carrier:* an insurance company owned by the operation it insures, set up by a group, company or association that wants an insurance company for their own risk.
- *hard and soft cycles:* terminology which refers to the fluctuations and changes in the insurance market; "soft" describes conditions in which insurance industry investments are profitable and policy rates are lower and more competitive, while "hard" refers to market conditions in which insurance companies are receiving comparatively less on their investment returns and subsequently are increasing rates and tightening markets.
- *joint underwriting authority (JUA):* a mechanism which creates a pool of insurance companies in a given state; by state mandate of participation all companies selling child care liability insurance in that state are mandated to participate in the pool and must insure some portion of the child care programs applying for coverage.
- *loss prevention (loss control):* the practice of reducing risks and thereby improving program and becoming more attractive to insurance companies; loss prevention includes education, training, licensing, and setting high standards of safety and professionalism.
- *market assistance plan (MAP):* a mechanism similar to the JUA, but creating a voluntary pool of companies who agree to insure a share of the applicants in a given market, such as the child care market.

- *occurrence/claims made:* this terminology refers to whether your policy is good for any incident that occurred while you held your policy, (regardless of whether it was reported while you held the policy or later), or only for those incidents on which you had claims made while you actually held the policy.
- *purchasing group (or group purchasing plan):* a mechanism authorized under the 1986 Risk Retention Act of Congress, whereby an insurance company insures a group of like risks as a group. Some purchasing group insurance is being written by existing companies, but a number of companies have been newly formed for that purpose.
- *risk management:* the overall strategy of identifying, analyzing, and evaluating risk and choosing the most advantageous methods of treating it.
- *risk retention* group: a type of self-insurance set up under the guidelines of the 1986 Risk Retention Act. A risk retention group is not regulated but must be licensed as a state insurance company.
- *self insurance:* generic term to define the means of retaining risk without purchasing insurance from an outside company, often under a pooling arrangement.
- *split/single limit:* terms referring to the breakdown of the limits of a comprehensive liability insurance policy, indicating whether or not the liability limit is split between several kinds of settlement.
- *tort reform:* refers to efforts to address the insurance crisis by legally restricting the terms of liability settlements or limiting the settlement amounts.

Insurance Basics: Information for Choosing a Carrier and Policy

Once you have made your program as safe and secure as possible and have identified the risks inherent in your work, you will want to take the next risk management step: protect yourself with *insurance.* Shop carefully based on your particular program needs. And know that insurance coverage and rates vary widely from state to state and change from year to year. What follows is some general information about insurance for you to use as you begin your search for a good policy to meet your needs.

Accident Insurance

Perhaps the easiest and cheapest way to protect your child care program is by carrying accident insurance. Because most serious incidents at child care programs are accidents involving injury, accident insurance is very important.

And accident policies work faster and are easier to manage than liability policies. Carrying accident insurance has the added advantage of being able to reassure parents in a traumatic moment. Fortunately, accident insurance is readily available and affordable. Yet, sadly, most child care liability cases stem from inadequate compensation in the case of an accident.

For example, let us imagine that 3-year-old Susie falls off the slide at Happy Day Nursery and sustains injuries, including a broken arm and a head injury. She requires immediate and follow-up medical attention. If Susie's parents have no medical insurance themselves, *or* if they have medical insurance with a high deductible, they may find themselves facing medical bills for at least part of Susie's care. If Happy Day carries accident insurance, all Susie's expenses may well be covered. If, however, Happy Day has no accident protection, Susie's parents may sue for damages due to negligence in order to recover the medical expenses they have incurred. With proper accident coverage, Susie's needs may be met without costing her family anything.

Accident insurance is *not* liability insurance. And carrying accident insurance will not protect you from liability suit. But having good accident insurance can improve relations with the families using your services and thereby potentially reduce your risk of suit.

General Liability Insurance Coverage

In addition to practicing loss prevention and carrying accident insurance, *all* child care risk management should include general liability insurance. The average coverage has increased from a $300,000 limit to a limit of $1 million. As you look for a policy or review your current one, check carefully what it covers and how that coverage matches your program and its needs. We have collected some tips on policy features to help you choose a carrier and policy. But information varies widely and changes quickly. Be sure to read your policy carefully before you buy. The lowest priced policy may not be the best deal. It's important to get beyond the

jargon and study the fine print. Many polices have *exclusions*; check them carefully to be sure the policy still includes what you need.

A good general liability insurance policy should cover these four kinds of costs when the insured's negligence is found to cause injury:

1. Medical care for bodily injury to others, which includes physical injury, pain and suffering, sickness and death;
2. Repair/replacement for damage to other people's property, including both destruction and loss of use;
3. Immediate medical relief at the time of the accident.
4. Legal defense if you are sued (the insurance company will pay for your defense even if the suit is groundless or fraudulent.)

Homeowner's, Owner's, Landlord's or Tenant's insurance are examples of general liability policies that may be suitable, though often a child care program will need a commercial policy. A general policy will cover these four costs but usually *only* when the injury occurs at the program.

A *comprehensive* general liability insurance policy stretches the general liability coverage further, so that the four costs will be paid even when the injury occurs away from the program site. If your program includes off-site activities, such as field trips or recess at a nearby playground, you probably need the flexibility of comprehensive coverage.

Broad Form Liability Insurance

Usually, a liability policy will be broad form, including all of the above, plus the categories of coverage listed below, but if your policy is not broad form, be sure that you are covered for any of these areas important to your program.

- *personal injury insurance:* protection for a libel, slander, or an invasion of privacy lawsuit, where injury is to a person's feelings or reputation.
- *contractual liability insurance:* protection needed if your program enters into a contract, such as a lease, including a provision whereby the program assumes the legal liability of the funder for any damages that arise under the contract.
- *fire legal liability insurance:* If you rent or lease your child care space, fire legal liability insurance is necessary to cover you for fire damage to the building caused by your negligence, and often fire insurance is required by a landlord. Although your landlord probably has fire insurance, if you are found to cause a fire on the premises, your landlord's insurance company will pay the landlord's claim and then attempt to collect the cost of the building repair from you. The amount of fire legal liability insurance you carry should be enough to restore completely the portion of the building that you occupy, in the event of a total loss.

Additionally, consider these types of coverage and have them included in your policy if they are areas in which you have risk.

- products liability insurance: protection needed if you serve food or even if you

have fundraising activities such as bake sales, because someone might be injured by the food.

- owner's and tenant's liability insurance: This is a very limited type of coverage which will apply to any claims arising from the child care operation on the premises listed on the policy.

Who is covered

In addition, for whatever types of insurance you purchase, it is important to find out who is covered. There may be limits on coverage for employees, volunteers, board members or officers. Usually employees are covered except if they are personally sued. Often volunteers are not covered. And directors, board members and officers can be sued for improper management or imprudent decision-making. Most directors and officers coverage is only written on a claims made basis.

Policy Advantages

Finally, as you shop for insurance, here are some beneficial features to look for:

1. The church's policy - It is important for a church-housed child care program to discuss insurance with the host church. What coverage does the church already have, locally or denominationally? What provisions might be made or riders obtained to cover the child care program under the church's policy? Is a separate policy necessary? How can the church help the program in reducing the risk and in obtaining the needed liability insurance for the program?

Encourage your host church to explore insurance issues with the child care program. It is often easier for a church to get coverage than its leaders may think, and it is almost always easier for a church child care program to get insurance with the church than on its own.

Another matter to weigh carefully with the host church is the issue of ascending liability. That is, if the child care program were to be sued, could the church and even the larger denomination be liable as well? What steps can be taken to protect against this risk?

2. Abuse coverage - Most liability policies include an exclusion for coverage of physical and sexual abuse of children, including corporal punishment. Of course, no insurance can protect you if you are guilty of criminal activity, which child abuse could be. But suppose you are unfairly charged and need to defend yourself and/or pay damages for an incident that took place in your center. Liability coverage would be very useful.

Unfortunately, though a few companies include some coverage for abuse, it is very difficult to find liability insurance including protection in the event you are charged with abuse. The main reason most policies exclude this coverage is the perceived high risk of sexual abuse *and* the enormous settlements that have been awarded in a few highly publicized cases.

Because of the extremely limited availability of this coverage, you may need to settle for a policy that excludes it. But be sure to discuss the issue with your carrier. And then don't just forget about it! "This can't happen to me," is a sadly common attitude among child care providers. Don't assume you are immune to accusations

of abuse. Take a risk management approach to protecting yourself: include in-service trainings on detection and prevention of child abuse for your staff, and offer information to parents and dialogue with them about the nature of abuse and strategies for prevention. Establish a system to supervise and monitor your program. And, most important, consider and train for responses to unfounded allegations of abuse.

3. Occurrence or claims made: Check your policy carefully. "Occurrence" has only one criterion: that you *had* the policy when the incident *occurred*. But "claims made" has two criteria: that you had the policy when the incident occurred *and* that you still had it when the incident was claimed with the insurance company.

For example, let us imagine that Happy Day Nursery was insured by Anderson Insurance Company for 1985-1986 but in 1987 switched to a different insurance company. Joey was injured one day during 1985-1986, but Joey and his family did not bring suit against Happy Day until several years later for the ongoing damages caused to Joey by the injury. If Happy Day's policy was "occurrence," the program is covered, regardless of when the claim was made, because Joey's injury *occurred* while the policy was held. If, on the other hand, Happy Day's policy was "claims made," Happy Day would only be covered if Joey's family made the claim during 1985-1986, while the policy was held.

4. Split or single limit - Check not only what your policy covers, but also find out how that coverage is broken down. Single limit coverage is preferable because of its flexibility. For example, suppose Happy Day Nursery is found liable for $750,000 bodily injury and $250,000 property damage. A $1 million single limit policy would cover the full cost. However, a $1 million split limit policy, with a $500,000 limit on property damage and a $500,000 limit on bodily injury, would leave Happy Day Nursery with $250,000 not covered. Also, look for a policy which *excludes* defense costs from policy limits. Otherwise, policy limits could be expended by court and legal costs, leaving nothing with which to pay the settlement.

5. Risk pools: Explore whether in your community there is a group of child care providers or other nonprofit groups all needing liability insurance. They might form a risk pool or risk retention group to be insured together. This may be a good solution for groups who have found it difficult to get insurance. You would need professional advice to be sure you could establish sufficient capital for the pool and determine a workable management structure.

Insurance policies: What's available

Atlantic Mutual:

The Atlantic Mutual companies (in Hawaii, the Centennial Company), write insurance policies especially for churches under their Insurance for Churches (IFC) program. They can insure a child care program as part of a church package. Several denominations (United Church of Christ, Evangelical Lutheran Church in America, United Methodist Church), participate in the Atlantic Mutual IFC program as bodies, but the program insures individual local churches of all denominations as well. A benefit of the program is that it pays dividends at the end of each profitable year. Atlantic Mutual, available in all states, offers a rider on a church policy to provide up to $1 million liability insurance coverage for a child care program run by the church. For further information about this church insurance option, contact your pastor or denominational leader. Churches should contact a local Atlantic Mutual agent directly.

Church Mutual:

A similar option is available through this specialty company which writes insurance for churches only and can insure a church-run child care program as part of that church's coverage. This market is the only one they serve, so a child care program housed in a church can be covered only if it is actually run by that church. Child care coverage can include general liability, medical payments (accident), and teachers' liability.

The Church Mutual child care program coverage also includes up to $300,000 legal and settlement coverage for sexual abuse. (States in which this policy is available, as well as the Church Mutual addresses, are listed in the appendix.) Churches should contact a local agent or the Church Mutual Sales Department.

First Nonprofit Risk Pooling Trust:

This Chicago-based organization, created under 1977 Illinois state risk pooling legislation, represents a pool of 800 Illinois nonprofit organizations which came together in 1978 to pool their risks and create a managing entity for their own insurance needs. Through the Trust, these organizations contribute to a trust fund that then issues contracts for their protection. A child care center or church *in Illinois* could be eligible for participation in the Trust. First Nonprofit offers particularly competitive coverage for urban and inner city churches in Illinois.

Nationwide, First Nonprofit works through the Great America Insurance Company to write insurance for nonprofits in states outside Illinois. Great America offers child care coverage *only* to organizations that operate a child care program as one of several human service programs. (For example, if ABC Charities of Anywhere, USA, has a series of programs and community services in operation, including a child care center, it could be covered. If, however, its only business is a child care program, it would not be eligible.)

The coverage through First Nonprofit includes a physical and sexual abuse endorsement of $300,000 to its liability general policy limit of $1 million. For more information about this policy, in Illinois, have your agent contact Byron Stone, President, First Nonprofit Risk Pooling Trust, Suite 955, 111 N. Canal Street, Chicago, Illinois, 60606; outside Illinois, contact a Great America agent.

Cigna:

This company writes insurance specifically for members of the National Association for the Education of Young Children (NAEYC) and uses the NAEYC accreditation standards as its underwriting guidelines. Since 1984, Cigna has offered this group comprehensive general liability policy with a $1 million limit, as part of package coverage for child care centers. The policy is available in all states to *center-based* programs operating at least 25 hours weekly. An advantage of this policy is that it encourages and rewards a high quality program with strong safety standards. Cigna pays dividends for proven low losses. The Cigna policy requirements are strict in terms of staff-child ratios, number of children and other guidelines, and the policy excludes coverage for child abuse or corporal punishment. The policy is available through Cigna or a local MarketDyne agent.

Continental:

This policy also represents an insurance option written specifically for child care providers. The policy has been available since 1985 when it was created in response to the liability insurance crisis and the ensuing dialogue between child care advocates and the insurance industry.

Specifically, the Continental policy is the result of the work of the National Child Care Task Force on the Insurance Crisis, formed by the Child Care Action Campaign. This group brought together representatives from key child care associations, including the National Council of Churches Child Advocacy Office, to meet with insurance industry representatives in the hope of developing a universally available child care liability insurance policy to fulfill the needs of family day care and center-based providers alike (For a list of participating groups, see page 47).

The task force supported the policy Continental developed as a policy with a specific child care design available to both centers and family day care. The policy offers comprehensive general liability coverage at levels of $500,000 or $1 million. This policy includes medical payments coverage allowing day care injury claims to be paid without an extra accident policy. The premium is determined by the number of children the program serves and not by the square footage of the facility.

In spite of its good features the task force did not go so far as to endorse the Continental policy. The biggest drawback is that it requires a minimum premium of $500. This policy cost is comparable to many other policies, but is unaffordable for most family day care homes. Furthermore, a widely varying premium rate by state makes Continental's policy even more expensive in some places. Because the Continental policy is *claims made*, it is less valuable to child care providers than an *occurrance* form, but the company is considering revision on this and several other issues, including child abuse coverage which is currently not included.

The Continental policy is available in just over half of the states (see list in appendix), but not in other states.

BMF Insurance:

This policy is specifically for family day care and is not available to center-based programs. The general liability policy is written for a licensed family day care provider serving up to 12 children. Premiums vary with the number of children and other options selected. Liability insurance is $300,000 limit and also includes $20,000 accident coverage. Coverage for child abuse and corporal punishment is excluded. BMF is available in most states. For a listing of states and information about contacting the company, see appendix. BMF offers discounts in some areas for those who have completed risk management (loss prevention) training.

Family Day Care: Specific Concerns

Perhaps hardest hit by the liability insurance crisis, family day care providers have been the most likely to cease operating or to go without insurance. Some family day care providers have been refused a liability rider on their homeowner's policy or have lost their homeowner's insurance altogether because they operate a child care program. Securing insurance has been difficult and very expensive. But family day care providers who operate uninsured programs leave themselves vulnerable to suits in which they could lose their homes. For family day care providers, as for all other child care programs, a risk management approach is the best strategy (see p. 12).

The National Association for Family Day Care (NAFDC) has been working on ways of improving the insurance situation for family day care. According to the association, there are currently two or three companies or brokers offering family day care insurance (including Continental and BMF, above), but it is very expensive.

Under the 1986 Risk Retention Act of Congress (see page 29), group insurance for family day care nationwide is now a possibility. And the NAFDC is eager to facilitate such coverage. Unfortunately, states are resisting compliance with the new law, so it has been well-enforced in only about a third of the states. The U.S. Department of Commerce has recommended modifications to the law to insure greater compliance, and the NAFDC anticipates availability of the BMF family day care group policy in more states soon, though availability is still state by state.

In the states of Washington and Maryland, family day care providers may benefit from legislation which compels companies who write homeowner's insurance to offer a family day care rider.

According to NAFDC, as of 1987 there are fewer cancellations of homeowner's policies for family day care than there used to be. The association believes this represents some softening of the market for family day care but also reflects a more sophisticated understanding of insurance on the part of family day care providers themselves. The Association's advice to family day care providers is: Be wise as you shop for homeowner's insurance and careful about how you ask the question to see if your family day care home will be covered.

Strategies For Reforming Insurance Policies In Child Care

Child care providers, like so many other businesses and not-for-profit groups, are learning to protect themselves in the crazy and difficult storm of liability insurance. Being an informed consumer, running a good program, and shopping for an insurance policy that meets your needs, are ways to manage the risks of child care and not be defeated by them.

But the problems of risk management in child care are structural and the solutions are long-term. Some legislative changes are needed to improve policies of liability insurance.

Strategies: States

Insurance is primarily regulated at the state level. States can pass legislation which places restrictions or requirements on insurance companies, but they cannot compel companies to write insurance in their state. Consequently, an insurance policy available from a national company in one state may be far more expensive in another and completely unavailable in a third.

Insurance reform includes efforts to regulate the insurance industry so that it is more responsive to consumer realities. Reforms are most effective at the state level, since the state legislature regulates a state's insurance industry. A national company must be licensed to write insurance in a given state and must work within the laws and guidelines of that state.

There are several vehicles for potential reform at the state level. The two most popular and least controversial are Market Assistance Plans (MAPs) and Joint Underwriting Authorities (JUAs). Each of these two mechanisms creates a state pool of insurance companies. In a MAP, the insurers are *voluntary* participants, agreeing to insure a share of the applicants of a given insurance market, i.e., the child care programs of the state. In the case of a JUA for child care liability insurance, all companies selling child care liability insurance in that state *must* participate. Each must insure a portion of the child care programs applying for the coverage.

MAPs are far more popular with insurance companies, though a number of states have JUAs or both — and both are beneficial to child care providers. To avoid compulsory participation in JUAs, some insurance companies have stopped or threatened to stop writing child care liability insurance in states which consider the JUA solution.

Other vehicles for state insurance reform include a risk management requirement making insurance companies responsible for loss prevention and risk management training of their clients; state requirement of claims studies and careful record-

keeping by the insurance companies; and the involvement of banks in selling insurance.

Tort reform is another way of setting guidelines and restrictions for liability. This is an approach which limits the legal profession and those they represent. In tort reform, a state legislature may set upper limits or "caps" on the financial settlements that can be awarded in a liability suit; or they may limit the time frame in which liability suits may be filed; or they may limit liability by exempting certain people or groups from suit. For example, a state might decide that nonprofit boards of directors are not liable — that they cannot be sued — in cases involving the personnel or program they oversee. Or they might decide that no single liability settlement may exceed a certain amount of money.

Both tort reform and insurance reform are being attempted in different states. Neither the insurance profession nor the legal profession likes the idea of regulation. Tort reform in particular may hurt victims if they are legally prevented from suing or otherwise limited in being compensated. Further discussion of strategies in these areas of reform is offered by Jim Strickland (see p. 31) and by Sharon Kalemkarian (see p. 38).

States File Suit

In early 1988, the attorneys general of seven states (Alabama, California, Massachusetts, Minnesota, New York, West Virginia and Wisconsin) filed federal suit against a number of large insurance companies. In addition, the attorney general of the state of Texas is taking similar legal action within that state. The main issue is the allegation that the insurance companies, through the Insurance Service Organization (ISO), boycott certain lines of business and try to control the market by establishing cartels. The ISO is an independent nonprofit umbrella organization for the nation's largest property and casualty insurance companies. The suit charges that some insurance companies — Aetna, Hartford, Travelers, Liberty Mutual, St. Paul Fire and Marine, Cigna, and USFRG — acted through the ISO to control the market.

A long battle is anticipated, and the outcome of these suits will not be known for a number of months or years. One effect will surely be greater attention to these and other issues of insurance reform. The issues and concerns of child care and other human service industries are likely to become more visible to insurance companies. Says Jim Strickland of Human Services Risk Management (Child, Inc.), "Watch the dynamics of the system in this suit. The suit may give the insurance industry more motivation to be responsive on the issues we've been discussing."

Strategies: Federal Reform

The state's responsibility for regulating insurance came in 1945 with the McCarran-Ferguson Act of Congress. That act also provided that the insurance industry is *exempt* from anti-trust regulation. This law makes it a business without much competition; further, it is one of the least regulated industries in our society and one of the most difficult to reform. As a result of the law the industry can fix prices, jointly establish rates, and function periodically or cyclically as a cartel. This means rates can go up 300% or 1000% without warning, without explanation, so insurance

may be relatively inexpensive one year and unaffordable the next. Furthermore, many states require insurance companies to maintain a certain solvency ratio, meaning that when they have a dramatic rate increase (double, triple, or more) they *must* drop some business to maintain their ratio. Markets that are perceived to be low-profit and/or high risk are easiest to drop.

This legal exemption of the insurance industry from anti-trust regulation has resulted in lack of competition, sharp rate increases and dropped coverage — all possible under the law! But today resistance to capricious insurance patterns has grown. Today there is increased support for legislation before Congress which would repeal that part of the 1945 act providing the insurance industry with immunity to anti-trust. A major result of such reform would be that cycles in the insurance industry would not be so sharp. Dramatic rate changes would be less likely because jointly established rates would no longer be possible. Companies would not be able to form cartels. In the long run, the insurance industry would be much more competitive.

What federal anti-trust legislation would *not* do is take regulation of the insurance industry away from the states. But with limited anti-trust exemption for insurance companies, states' power to regulate or deregulate would be greater.

Another national insurance reform would require the insurance industry to be more accurate in reporting data, a strategy like that tried by some states. As we know, the industry came into the recent crisis with no accurate data or claims history for the child care market, and thus no evidence for their contention that child care programs are high risk. This proposed federal legislation would establish a national reporting system for the insurance industry to document and record claims data.

Among those groups supporting national legislative efforts to reform the insurance industry are small businesses, groups representing retired persons, labor, consumers, the American Bankers Association, and the state attorneys general. While support for this type of insurance reform has grown, the industry still maintains a powerful lobby of opposition.

A 1986 act of Congress, the Risk Retention Act, while not a complete insurance reform, does offer a great improvement from the point of view of child care providers and other groups. The Risk Retention Act permits homogeneous risks (i.e., a group of family day care providers) to organize and form a risk retention group — that is, form a limited liability insurance company for themselves —*or* a group purchasing plan. To accomplish this it is necessary for the group to be attractive to a quality reinsurance company, in order to be covered. Further, the group must raise substantial reserves itself. The major stumbling block to risk retention groups continues to be the problem of securing good reinsurance and that of holding adequate reserves.

There have been some problems with the new law since its 1986 passage as evidenced in a 1987 implementation report to Congress, but the U.S. Department of Commerce is now working on the necessary modifications to make the law workable in all 50 states. To date, only a few risk retention groups have been formed, but over

200 group purchasing groups have formed.

To learn more about the Risk Retention Act, contact the U.S. Department of Commerce or your state insurance commissioner. To participate in the national effort to repeal the insurance industry's immunity to anti-trust law, write to your congressional representatives, and contact the National Insurance Consumer Organization (see resource list).

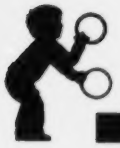
NOTES

[1]Sally Magur and Carrie Pekor, "Can Teachers Touch Children Anymore?" in *Young Children*, May, 1985, pp. 10-12.

[2]Other organizations represented on the task force were Child Inc., the Children's Defense Fund, the National Association for the Education of Young Children, the National Black Child Development Institute, the National Head Start Association, and Wheelock College.

[3]*Policy Statement on Child Day Care*, adopted by the Governing Board of the National Council of Churches, 1984.

[4]We are grateful to the Child Care Law Center and the Child Care Action Campaign for permission to adapt their resource materials for use in this section. These materials were taken in part from: "Liability Insurance," publication #81-19 of the Child Care Law Center, and "Fact Sheet #10" of the Child Care Action Campaign.



Human Services Meet Tort Reform

by James Strickland
Human Services Risk Management Exchange (Child Inc.)

Rational people do not usually sue themselves, and so long as we saw our churches and service institutions as extensions of ourselves we did not sue them either. There was even an informal understanding that community church activities and non-religious institutions established for the "public good" were not to be sued (especially not by the people they were set up to serve).

Unspoken agreements formed the common law doctrine of "charitable immunity." Though not successfully challenged until the 1940s[1], the "don't sue do-gooders" concept remained intact in most states through the 1950s. Even then the suits were usually not brought by those who received services. Yet the wall of immunity was breached, leaving human service programs unprotected from the onslaught of civil rights litigation which came with the 1960s.

The War on Poverty was a financial boom for human service programs, but along with the money came equally great legal complications. Literally overnight, in some cases, some small churches and community organizations were granted amounts of money which doubled, tripled or even quadrupled their previous budgets. Few of the new grantees were ever really trained in the legal liabilities they were assuming. Other than some executives of health and legal programs, few ever really stopped to contemplate how the new activities might impact on protections claimed under charitable immunity or their legal responsibilities to their clients or their staff.

By 1975, the new vulnerability was recognized but still underestimated. Some particularly optimistic human service administrators continued to insist that charitable immunity could be relied upon. Others realized that the cloak of charitable immunity was becoming tattered but hoped that it could be relied upon if their organizations stuck to more traditional religious or charitable activities. Litigation in the intervening ten years has proven both positions overly optimistic. By 1985, even the clergy were being sued for their normal pastoral functions.[2]

The increased number of suits would not constitute a litigation explosion, but when dealing with risks, the *perception* of the risk is often more important than the risk itself.

If we could adjourn all legislatures and postpone all insurance decisions until we could see who was correct, there would be no problem. But we do not have that luxury. We must make decisions now! Those decisions are based on our *perception* of the risk, and a 1986 Harris Poll reports that over seventy percent of those surveyed thought that it was too easy to sue and that the awards were too large. Those

perceptions were at least colored by the advertisements and the media exposure now given litigation.

There is one subset of the population which is particularly sensitive to ads and media exposure —insurance company executives. They also watch T.V., read the newspapers, and often form opinions on something other than acturial tables.

Executives of insurance companies perceive the advertisements and newspaper accounts of large judgments as increasing the likelihood that there will be more suits and larger claims. One theory is that their decision to pull back from "risky markets" was based at least partially on their expectation that suits will become even more common than they are now.

A more common theory is that the insurance industry goes through hard and soft cycles, and the latest wave of cancellations, non-renewals, and rate increases was part of just another cycle, and that things are already getting back to normal. But not all experts in insurance agree that the recent problems are just another cycle.[3]

What the cycle theorists fail to mention is that:

- This hard cycle is the first to be accompanied by the insurance industry's attempts to pass massive tort reform legislation.
- The current hard cycle is the first which coincides with both a hard cycle in the reinsurance industry (those companies which insure insurance companies against catastrophic losses) and a dramatic drop in interest rates.[4]
- This hard cycle has been accompanied by more insurance company insolvencies than any other since the Great Depression, so many that many State guaranty funds (the mechanism by which States protect policyholders from insolvent companies) are having problems.[5]
- These cycles are supposed to happen about every seven years. This last soft cycle lasted twelve years.

Even if we are experiencing just another cycle, the last soft cycle coincided with the explosive growth of human service. Most human service executives have never experienced a hard cycle —even those who were around during the last one probably weren't too concerned about the need for liability insurance. Up until the mid 1970s, "going bare" (without liability coverage) was the norm.

Regardless of the reasons, in 1985 many insurance companies began cancelling or not renewing the coverage of human service programs —especially those programs which served children. Many church-related programs were shielded from the first round of cancellations, not because the companies considered them less risky, but because many companies did not realize that churches were operating what they considered "high risk" programs. It took many of the human service organizations only a few months to begin reconsidering their policies held by child care programs.

Many human service networks conducted voluntary response telephone and mail surveys. Some even surveyed insurance companies and state boards of insurance. The state boards claimed they had no data which would confirm or deny the companies' contention that human service programs were poor risks. Many insurance companies did not respond, but those which did admitted that their claims informa-

tion was not grouped in ways to allow the needed analysis. Human service programs responding to these initial surveys reported few, if any, claims, and very few over $15,000. The best conclusion that could be drawn was that more objective data was needed.

Data from the Insurance Service Office (ISO) indicates that suits against human service programs are becoming more frequent, but that doesn't necessarily make the insurance executives correct.[6] There is some evidence that this increase in suits is primarily due to more frequent reporting, not more incidents. Comparatively, human service programs are not necessarily a bad risk. The chances of a human service program being sued are *not great*. But we cannot ignore the risk. We find ourselves in the position somewhat similar to turtles crossing highways —most will make it. It is just particularly devastating for those who don't!

It is no longer adequate for us "do-gooders" to just do good; we have to do it well! In his book, *The Vulnerable Social Worker,* Dr. Douglas Besharov notes that most human service professionals are not prepared to defend themselves. The situation is complicated further by the fact that the standards of practice for most human service programs are still ill-defined. From state to state standards for human service programs are at best inconsistent, and at worst, contradictory.

In the courtroom, this lack of clarity is almost always construed to the benefit of the plaintiff. To compound the problem, the courtroom demeanor of the human service defendent is often shock, surprise, or disbelief that such a thing could be happening. In cases where the daze of disbelief does wear off, it is replaced by equally unproductive feelings of anger that the client (who had been helped so much) would have the audacity to file a suit. "Didn't they know the harm was unintentional? Didn't they know the program was underfunded and doing its best? Didn't they know that you are not supposed to sue those who do good? Was there no justice left in the courthouse?"

Human service providers have become righteously indignant, and in forty-plus states we have carried that indignation from the courthouse to the state legislatures. Under the banner of "tort reform" we have asked that charitable immunity be recognized in legislation. Institutions established for the "public good" should be immune from civil suits, or at the very least their volunteers, employees and programs should have economic caps on their liability.

After all, human service programs often serve those who would otherwise need public assistance. If allowed to go unchecked, law suits will eventually cripple or kill the institutions, and those served by these institutions will require increased public assistance. It is to the public good to give human service programs special considerations.

As far as it goes, that is a sound argument. If *all* lawsuits were frivolous and not based on some real loss, there would be no problem. But what of the plaintiff who has suffered a legitimate loss: the young boy who went on the outing with a human service group which allowed him to bed down in a flammable tent too near the campfire. He awoke in flames. This now horribly scarred child appeared before some of the tort reform hearings, describing the excruciating pain, the endless grafts,

and the equally endless expenses. This child had a real loss, a loss that could have been avoided. Is it really to the public good to limit the liability of those responsible —to force the child's family to pay the on-going care and medical expenses?

Is it really to the public good to allow our most vulnerable citizens, our children, or elderly, or poor, to be served by volunteers with only a few hours training or by inexperienced or underpaid staff? When the lack of training or experience causes a severe injury or costly property damage, who is responsible? Should those who are responsible be absolved of liability? Most clients of the human service programs are of the population least able to absorb losses without turning to public assistance. Obviously, it is not in the public interest to expect the client to bear the losses for bad service. When "human services" meet "tort reform," there is no simple, quick solution.

The tort reform battles are interesting, but truly responsible church and human service programs are going to have to look beyond the legal arguments and decide for themselves what is responsible behavior. In legal terms we are going to have to determine acceptable standards of practice. How far are we willing to go with untrained volunteers, underpaid, or inexperienced personnel? Ultimately, how willing are we to gamble with the lives of those we serve, and who should pay if we lose?

That question represents the low point on this ideological roller coaster, because once it is asked we are forced to understand what a strict tort reform approach really means to human services. It means limiting the rights of those we serve. In children's programs tort reform could mean limiting the length of time the child has the right to bring suit.

Typically, children have the right to sue for anything that happens to them as children at least until they are of legal age. Theoretically, at least in some states, an eighteen-year-old child might be able to sue an adoption agency if the agency placed her or him in a home where she or he was abused. A tort reform approach to this problem is simply to limit the number of years during which the child has a right to bring suit. Under this strict tort reform approach, even if a child is injured because of some one else's negligence, the child would have to

–realize that he or she has been wronged;
–determine that the damage was because of some else's negligence;
–find someone to bring the suit on his or her behalf;

all while he or she is still a minor. That puts the minor at a severe disadvantage.

Obviously, human service programs must address how they will relate to the civil justice system, but because we are *human* service programs our approach —above all else —must be humane. One approach is for each human service to clearly catalog its own liability risks, determining the frequency and severity of liability losses. Some human service programs have already begun this ambitious task.[8]

Once the risk analysis is complete it can be used as a guide for standardization of:

–accreditation criteria

–state regulations

–licensing requirements

–purchase of service and control requirements

–training requirements.

Once these revised "standards of practice" are developed, they can serve as the basis for humane tort reform. Rather than gratuitous, no-strings-attached limitations on liability for everyone, these considerations could be extended only to the programs adhering to these higher standards of practice, and training their personnel accordingly. The models for risk reduction tort reform have passed in Texas[9], and similar legislation is being considered in other states. One other reason for introducing risk reduction into the tort reform debate is that it is the obvious missing link. It is impossible to have a full discussion about tort reform without touching on the liability insurance issue and risk reduction/risk prevention, and *loss control forms the best bridge between the two issues.*

In addition to appearing more humane (and perhaps better able to withstand legal challenge), the risk reduction approach to tort reform also offers the opportunity to resolve the insurance problem.

Risk analysis and risk reduction training can be used to convince the insurance industry that human services are an acceptable risk at a reasonable premium. The risk management movement is becoming so popular that should that approach fail, the information can be used as base data for the establishment of a risk retention (self-insurance) group.

In September of 1987, Baily, Martin and Faye Insurance Brokers (BMF), recognizing the value of risk reduction training, established a premium discount for family day care homes which have completed authorized risk reduction training. Also, at least one state has just passed legislation which facilitates the formation of human service self insurance groups provided that the underwriting standards "include but (are) not limited to the requirement that all participants in the pool receive on-going training in the methods of controlling liability losses."[13]

In October of 1987, Senator Orrin Hatch introduced legislation which enhanced the potential for risk retention groups by setting up a fund to help provide financial reserves for such self-help operations. Obviously, risk analysis and loss control training would do a great deal to insure the success of these operations.

The Hatch bill addressed only child care, but it is a start, and it establishes a favorable precedent for similar human service plans.

Proposed federal legislation is beginning to address the need for greater risk assessment and training, particularly in the area of diseases which could be encountered in the work place. [13] State legislators have even begun to look for ways to encourage companies to become more familiar with the risk they would choose to insure.

If properly used, these state-mandated risk reduction programs *provided by insurance companies* could easily be mated with the new training that regulatory agencies are now requiring of human service providers.

Even without legislation requiring insurance companies to provide indepth, specific loss control training, it might be advisable for the insureds to request it. The response might be a good measure of just how much the insurance company agent or

broker really knows about the risks that the human service programs now face. For example, why is it that many human service programs are routinely sold comprehensive general liability insurance policies which contain loading and unloading exclusions, without being told that this exclusion might preclude the coverage of claims arising if someone is injured while getting on or off a program's van or bus? Some experts estimate that over sixty percent of errors and omission claims against agents and brokers arise from circumstances where they did not properly analyze or understand the risks they were insuring.[14]

By May of 1987, 15 states had passed or were considering laws which would in some way shield volunteers of nonprofit programs from liability suits. Each piece of such legislation must be analyzed on the basis of how it will effect the human service program, its employees, its volunteers and the individuals the program was formed to serve. In our zeal to resolve the immediate problem (the liability of human service programs and volunteers), we may be advocating some legislation which actually increases the potential for suits against employees. Legislation which caps the limits of liability of the program and caps the limits of liability of the employer may increase the potential of the employee being added to the suit so that the total settlement (the program's limits plus the employee's limits) will be larger.

As we have pointed out, simple tort reform is not so simple. It is made more complex by collateral insurance reform and ongoing reform in human services. Our profession needs to develop more commonly agreed upon standards of practice and bring risk reduction, analysis, training and certification to human service programs. The simple electrical extension cord which is used in nursing homes and day care centers can be relied upon because of testing, inspection and certification supported by the insurance industry's Underwriters Laboratory. A recent national advertising campaign of the Insurance Institute points out that Underwriters Laboratory was formed and supported by the insurance industry. Since we now have a service-oriented economy, this may be the time for similar support to service programs — now may be the time for a human services Underwriters Laboratory.

NOTES

1. G. Calderia, "Changing the Common Law: Effects of the Decline of Charitable Immunity," in *Law and Society Review*, 16 (1981-1982), p. 669. See also, President and Directors of Georgetown College v. Hughes, 1942 130 F2 810.

2. D. Ranii, "Clergy Malpractice — The Prayer of Relief," in *The National Law Journal*, March 4, 1985, p. 1; and "Malpractice Approaches the Pulpit," in *The New York Times*, June 6, 1982, p. 8F.

3. Chris Best, "London Perspective — Realigning Rules of Insurers and Insureds," in *Risk Management*, November, 1986, p. 12.

4. J. Strickland and R. Neugebauer, "Yes, We Have no Insurance," in *Child Care Information Exchange*, July, 1985, pp. 26-30.

5. "Insolvencies Said Threat to State Guarantee Funds," in *Liability Insurance Bulletin*, March 9, 1987.

6. *Insurance Information Institute Data Base Reports*, February, 1986, p. 4.

7. D.J. Besharov, *The Vulnerable Social Worker*, Silver Spring, Maryland: National Association of Social Work, 1985.

8. J. Strickland, "The Child Care Insurance Crisis and What's Being Done About It," in *Child Care Center*, September 1986.

9. Wilson H.B. 1963, dealing with absolution of Dram Shop liability, passed by the Texas Legislature, 70th session; and Farabee, S.B. 9, dealing with nonprofit organizations liability insurance pool, passed by Special Session of the 70th Texas legislature, 1987.

10. James, S.B. 2, passed by the Special Session of the 70th Texas Legislature, 1987.

11. Farabee, S.B. 9, Texas legislature, 1987, dealing with nonprofit organizations liability insurance pool.

12. Farabee, S.B. 9, Texas Legislature, 1987.

13. Metzenbaum, S.B. 79, dealing with identifying and preventing illnesses and deaths associated with occupational diseases, introduced in the U.S. Senate, 1987, and currently being debated.

14. R.T. Anderson, *Agents Legal Responsibility*, Cincinnati: National Underwriter Company.

15. "Laws Shielding Volunteers," in *Liability and Insurance Bulletin*, May 11, 1987. States include Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Kansas, Louisiana, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wyoming.

Getting Organized and Fighting Back: A California Case Study

By Sharon Kalemkarian
Insurance for Child Care Project

In 1985, an unprecedented insurance crisis hit the child care community across the country. In California, due to adverse publicity from a much publicized abuse case and an insurance industry contention that we are a more litigious citizenry, child care programs were especially hard hit. Aggravating the general panic by insurers of child care was the cancellation by Mission Insurance mid-term of all of their family day care policies (approximately 6,000 policies). The cancellation occurred because Mission Insurance was going bankrupt, for reasons wholly unrelated to the child care. But these cancellations suddenly brought child care insurance problems to the public's attention.

Insurance is a kind of problem that everyone talks about —but no one knows what to do. When this crisis began, most child care providers knew very little about their insurance coverage, and even less about the insurance industry. It became clear during 1985 that child care needed its own voice in the unfolding public debate. That is why the Insurance For Child Care Project (IFCC) was formed. We are an advocacy group made up of representatives from child care organizations, with one simple goal: to assure reasonable access, fair rates, and comprehensive policies for child care liability insurance.

We formed IFCC because we learned that our individual, separate efforts could have little comprehensive impact on an industry as powerful and sophisticated as the insurance industry. We began in the spring of 1986, with an extensive planning session which helped set the goals for the next 24 months. The steering committee includes representatives from every type of day care (for profit, not for profit, centers and family day care) as well as people who have had experience working in the legislature and in the inurance industry itself. From the beginning we have worked on a consensus basis, always seeking strategies and programs that everyone can agree on. Some funds were raised from small foundations to help us hire one staff person during our first eight months of operation. Most of our efforts have been made by dedicated volunteers working at their jobs and from their homes to solve these insurance problems.

We are very pleased with what we have achieved. Although we haven't yet reached our goal, the following concrete accomplishments have helped all child care providers in California:

1) Legislation was passed, with the help of the California Legislature's Women's Caucus, which requires the insurance industry to report their yearly business figures from child care to the Department of Insurance for public inspection and report.

2) This same legislation made it illegal for an insurance company to cancel homeowner's insurance just because the resident runs a family day care home.

3) With the help of the Insurance Commissioner, we secured agreements with two homeowner insurance companies to offer a special family day care homeowner's policy at a reasonable price.

4) We convinced the Insurance Commissioner to issue an advisory opinion to inform insurers that they should use licensing ratios as the ratios for insuring child care programs.

5) We helped to pass legislation which enabled the state to set up a special insurance program for child care through a Joint Underwriting Association (JUA). We are now waiting for the Insurance Commissioner's decision as to whether she will set up such a program.

6) We helped to increase competition and bring about a drop in family day care rates from the major insurer in California.

Other less tangible but equally important accomplishments should also be mentioned: Child care providers are much better informed of their insurance needs and insurance rights. Informing the consumer population is the first step towards beating unfair prices and unfair policies. The insurance industry is also much better informed of the needs of child care. We are the one group who did not go away, who has continued to hammer away until the insurance industry has understood our problems and overcome their fear of children. The response of at least one major company to a part of the market (Fireman's Fund has begun a program for co-op preschools) indicates that companies have heard our challenge.

There is much still to be done —both in California and around the country. Insurance is still very hard to find, with only a few companies offering viable policies. Many types of children are impossible to insure: special needs children, infants, and school age children. And prices remain extremely high when compared to previous premiums, even though no insurance data justified such large increases.

As we continue our work, we look forward to joining with those of you in other states who are beginning similar efforts.

Key Steps Toward A Powerful Movement for Child Care Insurance Reform

First: Put together a broad-based coalition, which includes people with expertise in child care and insurance. Include organizational representatives from key child care and child advocacy groups in your state. Everyone's needs here are fundamentally the same, even though some policies may be personal (homeowners) and some commercial. Don't exclude anyone: even if people haven't agreed on other issues, they can agree on the need for reasonable and comprehensive insur-

ance. Include someone with legislative experience or experience working with a state agency. Perhaps most important, include someone who has worked in the insurance industry and understands the jargon and the way the business works. This person can guide you through the discussions and make you more competent and confident.

Second: Clearly identify your goal. Work on a goal which is broad enough to cover what you really want, but attainable. Develop the goal at a group brainstorming session. Publicize it, stick to it, and keep it as your guidepost as you proceed. In defining your goal, you may want to survey some child care providers in your state to understand exactly what the problems are.

Third: Educate the child care community at large. IFCC conducted a series of three-hour "Insurance teach-ins". We helped people to understand how the insurance industry works, to see that the industry didn't really lose money on child care, and then to understand the possible solutions to the crisis.

Fourth: Research possible solutions in your state. A good place to start is to contact public interest organizations in your state that might have worked on the issue. Check local universities and law schools to see if there is a professor who has studied insurance reform. You may want to survey what other states are doing by calling IFCC, other child care organizations, and state Departments of Insurance. Get a good idea of the range of proposals from which to choose. These may include negotiating directly with the companies writing insurance in your state, setting up a self-insurance group, setting up a purchasing group, exploring different types of state programs or regulations.

Fifth: Get to know your insurance regulator. Most states have someone who is in charge of regulating insurance. Go to see that person — once you have decided on your goal. The insurance regulator will not be either an ally or an adversary, but does not have your interests alone at heart. Don't be afraid to push hard for what you need, but stick to the facts when dealing with regulators. It gives you credibility and makes your case invincible.

Sixth: Publicize what you do, and keep child care providers informed. IFCC started a monthly newsletter, which goes out to subscribers and other interested parties. We include updates on our activity, as well as on the latest insurance information. Keep not only your supporters informed, but the media as well. The press in California has been very responsive to our efforts, and has seen the important impact that insurance had on the child care needs of our state.

Seventh: Don't lose heart or hope. This will be a long fight. The insurance industry has more power than we do, and they do not give up easily. Be ready to work on this issue for 2-5 years. Even if the current crisis seems to ease, remember that the insurance industry is cyclical. The "cycle" will wreak havoc again in 5-10 years, and child care is likely again to be the victim.

The day may come when we don't have to worry about insurance anymore. The future should hold abundant, quality child care for every family who needs it. But

we all know that this future is still far away, and part of getting there is being sure there is adequate insurance to meet the needs of child care professionals and the children we care for. You can be a part of building that future and making a difference for our next generation.

Appendix A
Child Care Insurance Policies

Church Mutual is available in 31 states. It is *not* available in Alaska, Connecticut, Delaware, Hawaii, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Nevada, New Hampshire, New Jersey, New Mexico, Rhode Island, South Carolina, Texas, Utah, and Vermont. The Church Mutual Sales Department may be contacted by interested churches at: 3000 Schuster Lane, Merrill, Wisconsin, 54452, (715) 536-5577.

Continental Insurance for child care *is* available in the following 21 states, plus the District of Columbia: Alabama, Alaska, California, Colorado, Delaware, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Michigan, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma, Oregon, South Carolina, Tennessee, West Virginia. For information contact a local agent.

BMF is available for family day care in all states *except* Arizona, Arkansas, Colorado, Florida, Iowa, Kentucky, Maryland, Minnesota, Montana, Nebraska, New Jersey, New Mexico, New York, Oklahoma, Pennsylvania, South Carolina, Virginia, Wisconsin. For further information from BMF, call them at 1-800-423-9733 (in California, call 1-800-624-0912).

Appendix B
Denominational Contact Persons

We have included as many denominational contact persons for your insurance needs as were available to us. Some of these contacts are not insurance specialists but rather financial or legal representatives. And a few denominations do not have any such contact person. If your denomination is not listed, contact your pastor or the NCC Child Advocacy Office.

These persons may be able to assist you with information about what others in your denomination have done and are doing with respect to issues of liability insurance.

African Methodist Episcopal Church

Dr. Joseph C. McKinney
Finance Department
African Methodist Episcopal Church
2311 M Street, N.W.
Washington, D.C. 20037
(202) 337-3930

African Methodist Episcopal Zion Church

Mr. Jewett L. Walker
Secretary-Treasurer of Mission, Relief and Pensions
P.O. Box 30846
Charlotte, North Carolina 28230
(704) 333-3779

Assemblies of God

Mr. Richard Hammer
Legal Counsel
General Council of the Assemblies of God
1445 Boonville Road
Springfield, Missouri 65802
(417) 862-2781

Baptist Churches

American Baptist Churches

Mr. Peter Ryker
Manager, Insurance and Real Property
American Baptist Churches
P.O. Box 851
Valley Forge, Pennsylvania 19482-0851
(215) 768-2469

National Baptist Convention of America

Dr. Marvin Griffin
Historian
1010 E. 10th Street
Austin, Texas 78702
(512) 478-1875

National Baptist Convention, USA

Mr. Robert E. Hill
Attorney
National Baptist Benefits Society
1116 S. 14th Street
Baton Rouge, Louisiana 70802

Southern Baptist Church

Mr. Brooks Faulkner
Senior Manager, Church Staff Support
Sunday School Board
127 9th Avenue, North
Nashville, Tennessee 37234

Christian Church Disciples of Christ

Mr. Rolland G. Pfile
Division of Homeland Ministries
P.O. Box 1986
Indianapolis, Indiana 46206
(317) 353-1491

Episcopal Church

Mr. James A. Lewis
Assistant Human Resources Officer
The Episcopal Church
815 Second Avenue
New York, New York 10017
(212) 867-8400

Evangelical Lutheran Church in America

Mr. George Aker
Treasurer
Evangelical Lutheran Church in America
8765 West Higgins Road
Chicago, Illinois 60631
(312) 380-2700

Orthodox Churches

Greek Orthodox
Ms. Mary Douvres
Greek Orthodox Archdioceses of North and South America
10 E. 79th Street
New York, New York 10021
(212) 570-3500

Russian Orthodox
Rev. Deacon Gregory Onisko
Patriarchal Parishes in the U.S.A.
35 Fieldstone Place
Wayne, New Jersey 07470
(201) 696-2409

Presbyterian Church (USA)
Ms. Dorothy P. Romaine
Risk Manager
Presbyterian Church, USA
475 Riverside Drive, Room 938
New York, New York 10115
(212) 870-2122

After August 1, 1988, please contact:
Risk Manager
Presbyterian Church, USA
100 Witherspoon Street
Louisville, Kentucky 40202-1396
(502) 580-1900

Reformed Church in America
Mr. Everett K. Hicks
Treasurer
Reformed Church in America
475 Riverside Drive, Room 1804
New York, New York 10115
(212) 870-2754

Roman Catholic Church
Ms. Regina Grunert
Manager of Human Resources
U.S. Catholic Conference
1312 Massachusetts Avenue, N.W.
Washington, D.C. 20005
(202) 659-6622

Unitarian Universalist Association
Dr. Robert Sallies
Treasurer
Unitarian Universalist Association
25 Beacon Street
Boston, Massachusetts 02108
(617) 742-2100

United Church of Christ
Mr. Peter Keck
UCC Insurance Advisory Board
50 Woodside Avenue
San Francisco, California 94127
(415) 753-8691 or 1-800-437-8830

United Methodist Church
Mr. Craig Hoskins
General Counsel
Council on Finance and Administration
1200 Davis Street
Evanston, Illinois 60201-4193
(312) 869-3345

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Child Advocacy Office
National Council of Churches
475 Riverside Drive, Room 572
New York, New York 10115-0050
(212) 870-3342

Resources

Organizations

Child Care Action Campaign
99 Hudson Street
Room 1233
New York, New York 10113
(212) 334-9595

Child Care Law Center
625 Market Street
Suite 815
San Francisco, California 94105

Human Services Risk Management Exchange (Child Inc.)
5555 N. Lamar Blvd., Suite K-123
Austin, Texas 78751
1-800-222-4051 or (512) 451-8187

Insurance for Child Care Project
P.O. Box 880433
San Diego, California 92108
(619) 584-7939

Insurance Information Institute
110 Williams Street
New York, New York 10038
(212) 669-9200
Contact: Warren Levy

National Association of Family Day Care
815 15th Street, N.W.
Suite 928
Washington, D.C. 20005
(202) 347-3356

National Insurance Consumer Organization
121 N. Payne Street
Alexandria, Virginia 22314
(703) 549-8050

RESOURCES

Publications

Am I Covered For? A Guide to Insurance for Nonprofits is a good general manual about all types of insurance coverage for nonprofit organizations and programs, including things you need to know about liability, things to look for (and to look out for) in securing adequate insurance coverage. Order from the Consortium for Human Services, P.O. Box 1183, San Jose, California, 95108, (408) 297-0755. Cost: $11.50

Child Care Information Exchange article reprints:

- "Liability Insurance Guide for Child Care Centers," by the Child Care Law Center, May, 1985;
- "Yes, We Have No Insurance," by Jim Strickland and Roger Neugebauer. July, 1985;
- "Your Insurance Is Cancelled!" by Carol Stevenson and Roger Neugebauer, March, 1985;

Order from Child Care Information Exchange, P.O. Box 2890, Redmond, Washington, 98073, (206) 883-9394. Cost: $2.50 per article. Also watch for articles on insurance in upcoming issues of *Exchange*.

"Child Care Liability Insurance," Fact Sheet #10, Child Care Action Campaign, 99 Hudson Street, New York, New York, 10013, (212) 334-9595.

"Child Day Care Centers," in *Target*, Vol. I, no. 2, September, 1987, a publication of the United Methodist Church. Order from Craig Hoskins, General Council on Finance and Administration, 1200 Davis Street, Evanston, Illinois, 60201, (312) 869-3345.

"Insurance for Child Care Project Newsletter," Sharon Kalemkarian, ed., P.O. Box 880433, San Diego, California, 92108, (619) 584-7939.

Jubilee, Vol. 3, #1, Neighborhood Action Program, American Baptist Churches, on Insurance and Child Abuse. Order from Peter Ryker, American Baptist Churches USA, P.O. Box 831, Valley Forge, PA 19488-0851.

Liability Insurance: Insuring Your Program (publication #81-19), by Kathleen Murray and Carol Stevenson, revised by William Kell and Lynne O'Shea. Published in

1986, this useful guide includes questions to ask in seeking liability insurance and provides specific suggestions for family day care providers. Order by number from: Child Care Law Center, 625 Market Street, Suite 815, San Francisco, California, 94105, (415) 495-5498. Cost: $3.00.

"Lions, Tigers and Bears and Other Risks," by James Strickland. Order from Human Services Risk Management, 5555 N. Lamar, K123, Austin, Texas, 78751, (512) 451-8187, 1-800-222-4051 or (512) 451-8187.

"NAEYC Position Statement on the Liability Insurance Crisis," 1986. Order from Child Care Information Service, National Association for the Education of Young Children, 1834 Connecticut Ave, N.W., Washington, D.C. 20009-5786. Cost: $2.00.

"Questions to Ask Before you Buy Insurance," a one-page resource provided by BMF Marketing Insurance Services, Inc., and available free of charge to family day care providers. Write NCPII, c/o BMF Marketing, 15250 Ventura Blvd., Suite 1012, Sherman Oaks, California, 91403-3228, or call 1-800-624-0912.

What's Covered/What's Not: Handle With Care, Vol. I, by James Strickland, is a liability insurance questionnaire, a way to *interview* your policy to see if it covers what you want it to. Order from Human Services Risk Management, 5555 N. Lamar, K123, Austin, Texas, 78751, 1-800-222-4051 or (512) 451-8187. Cost: $7.00

"Child care programs were caught in a web of insurance problems not of their own making."

"Were churches to be prevented from the ministry of child care by insufficient or unavailable insurance coverage, or to be hesitant to follow the gospel for fear of liability, or to fail to engage in ministry to children or others in need, it would be a tragic limitation of discipleship."

"The best strategy in the storm of the liability insurance crisis is risk management. ...Being an informed consumer, running a good program, and shopping for an insurance policy that meets your needs, are ways to manage the risks of child care and not be defeated by them."

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